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IN THE

SUPREME COURT OF THE UNITED STATES.

No. ~~795 Misc.~~, 30 Misc.

OCTOBER TERM, 1956.

VIOLA DYKE, Individually and as Administratrix
of the Estate of Harold Dyke,
Appellant,

vs.

WILLIE MAE KEATON DYKE et al.,
Appellee.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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FACTUAL STATEMENT.

The parties will be referred to as Plaintiff and Defendant, respectively, in accordance with their status in the District Court.

Plaintiff instituted an action in the United States District Court for the Northern Division of the Eastern Dis-

trict of Tennessee, contending that she was entitled to certain benefits under a policy of National Service Life Insurance.

The defendant was awarded the benefits by the District Court. Plaintiff prosecuted an appeal to the United States Circuit Court of Appeals, for the Sixth Circuit, at Cincinnati, Ohio. Plaintiff and Defendant stipulated as to the record on appeal, as follows:

> "This is an action for recovery of death benefits of a National Service Life Insurance contract between the United States and Harold Dyke, deceased.
>
> "Harold Dyke met his death, at a time when the policies of National Service Life Insurance issued by the United States of America were in full force and effect. The United States of America admits that the sums payable, pursuant to the terms and provisions of said policies of insurance, are due to be paid, and assumes the role of stakeholder.
>
> "Harold Dyke originally designated his mother, Viola Dyke, as principal beneficiary in his policies of insurance. Thereafter, and on October 4, 1950, Harold Dyke changed the beneficiary from Viola Dyke to Willie Mae Keaton Dyke, his wife, as principal beneficiary, and Betty Sue Dyke, his daughter, as contingent beneficiary.
>
> "On April 8, 1949, Harold Dyke was adjudged mentally incompetent by the Judge Pro Tem of the County Court for Knox County, Tennessee, and no restoration to the status of legal competency was obtained pursuant to the statutes of the State of Tennessee.
>
> "Evidence from lay and expert medical witnesses, and documentary evidence was introduced to the effect that Harold Dyke was mentally competent on October 4, 1950, the date the change in beneficiary was effected.

"The Court found in part that . . .'The Court is of the opinion and finds as a fact that the insured was of sound mind at the time he changed the beneficiary of his government insurance policy.' " 37a-38a.

STATEMENT OF QUESTION INVOLVED.

It was stipulated by the parties to the appeal that one question was posed for the Court's consideration. This stipulation was as follows:

"One point is presented for consideration by the United States Circuit Court of Appeals, Sixth Circuit.

"Was the District Court compelled to determine the sole issue presented to him under the law of Tennessee, or could he determine the issue under Federal Law?" 39a.

The parties further stipulated respecting the evidence:

"Evidence from lay and expert medical witnesses, and documentary evidence was introduced to the effect that Harold Dyke was mentally competent on October 4, 1950, the date the change in beneficiary was effected.

"The Court found in part that '. . . . The Court is of the opinion and finds as a fact that the insured was of sound mind at the time he changed the beneficiary of his government insurance policy.'

"**Substantial evidence supports the findings of the Trial Court.**" 38a.

FINDING OF COURT OF APPEALS.

The United States Court of Appeals, for the Sixth Circuit, in its opinion of December 1, 1955, affirmed the Judgment of the District Court, and held that the District Court was not obligated to follow Tennessee decisions which

established rules of property, in and for the reason that the Court had for consideration a suit upon a government contract which was to be interpreted by applicable Federal precedents—that **Erie R. Co. v. Tompkins, 304 U. S. 64**, did not apply to this action.

THE PETITION FOR CERTIORARI SHOULD BE DENIED.

Plaintiff states as one of the grounds for the Petition that the Court of Appeals decided a question of substance not theretofore determined by this Court, and in a way not in accord with applicable decisions of this Court.

Defendant respectfully asserts that this statement is untenable.

In **Clearfield Trust Co. v. United States, 318 U. S. 363**, the Court considered a factual situation wherein a check issued by the United States was presented for payment with a forged endorsement thereon. The Court determined that Federal Law and not the law of the state, wherein the check was cashed, should determine the rights of the parties. The Court stated:

> ". . . the rule of Erie R. Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817 . . . does not apply to this action. The rights and duties of the United States on commercial paper which it issues are governed by federal rather than local law. When the United States disburses its funds or pays its debts, it is exercising a constitutional function or power . . . The application of state law . . . would subject the rights and duties of the United States to exceptional uncertainty. It would lead to great diversity in results by making identical transactions subject to the vagaries of the laws of the several states. The desirability of a uniform rule is plain."

Plaintiff also contends that the United States Court of Appeals for the Sixth Circuit rendered a decision in conflict with the decisions of the Supreme Court of the State of Tennessee, and hence a question is posed of such importance that it should be settled by this Court.

Admittedly, the Supreme Court of Tennessee, in **Jackson v. Van Dresser et al., 188 Tenn. 384, 392,** held that under Tennessee statutes, "an adjudication of insanity is conclusive evidence, as a matter of law, of a continuation of that status until the person adjudged insane has subsequently been declared of sound mind by a decree entered pursuant to the provisions" of pertinent Tennessee Code Sections. However, the Court asserted that this decision established a Tennessee rule of property. It is elementary that a rule of property under State law cannot affect the disposition of insurance benefits arising under federal law; that National Service Life Insurance policies are contracts of the United States and possess the same legal incidents as other government contracts; and that their terms must be construed by federal rather than by state law.

Various federal courts have disregarded state decisions, in determining the construction of National Life Insurance policies, and have applied applicable federal law.

See:

Woodward v. United States, 167 F. (2d) 774, 779 (C. A. 8);

Lembcke v. United States, 181 F. (2d) 703, 706 (C. A. 2);

Barton v. United States, 75 F. Supp. 703 (S. D. Cal.);

Pack v. United States, 176 F. (2d) 770, 771 (C. A. 9);

Hilbert v. United States, 43 F. Supp. 838, 841 (E. D. Ill.);

Lynch v. United States, 292 U. S. 571, 54 S. Ct. 840, 78 L. Ed. 1434.

CONCLUSION.

Wherefore, it is respectfully submitted that Plaintiff has asserted no reason for granting a writ of certiorari. That hence the Petition should be denied.

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